

### **REMARKS**

The Applicant has now had an opportunity to carefully consider the comments set forth in the Office Action that was mailed August 22, 2008 as well as comments of the Examiner that were provided in telephone conferences beginning on or about October 9, 2008 and concluded on or about October 20, 2008. The allowance of claims 1-16 and 26-29 and the recognition of allowable subject matter in **claim 21** are noted with appreciation. Nevertheless, the rejection of **claims 17-20** and **22-24** are respectfully traversed. Amendment, reexamination and reconsideration of the application are respectfully requested.

#### **The Office Action**

In the Office Action that was mailed August 22, 2008:

**claims 1-16** and **26-29** were allowed;

**claim 21** was recognized as including allowable subject matter;

**claims 17, 22** and **24** were rejected under 35 USC §103(a) as being unpatentable over Patent Application Publication No. 2003/0219037 by Toskala et al. ("Toskala '037") in view of U.S. Patent Application Publication No. 2003/0232624 by Toskala et al. ("Toskala '624");

**claims 18-20** were rejected under 35 USC §103(a) as being unpatentable over Toskala '037, Toskala '624 and U.S. Patent Application Publication No. 2002/0147020 by Iguchi et al. ("Iguchi"); and

**claim 23** was rejected under 35 USC §103(a) as being unpatentable over Toskala '037, Toskala '624 and U.S. Patent Application Publication No. 2003/0073437 by Yuen ("Yuen").

#### **Telephone Interview Summaries**

On or about October 7, 2008, Mr. Thomas Tillander, one of the representatives of the Applicant, left a telephone message for the Examiner proposing amendments to **claim 17**, the only rejected independent claim in the present application. On or about October 9, 2008, the Examiner, Mr. Curtis A. Alia, returned the call. **Claims 17** and **1**

were discussed. The Examiner indicated that he would have to discuss proposed amendments with his supervisor.

To that end, Mr. Tillander prepared an email including proposed amendments to **claim 17** and a brief traversal of the rejection of **claim 17**. That email was transmitted to the Examiner on or about October 9, 2008.

On or about October 20, 2008, the Examiner called Mr. Tillander and indicated that the traversals would have to be presented formally to be fully considered and indicated that an amendment of **claim 17** to include means for --determining-- patterned after the determining element of allowable **claim 1** would probably place the application in condition for allowance. Accordingly, in the interest of compact prosecution, **claim 17** is being so amended.

On November 26, 2008, a notice of non-compliant amendment was mailed alleging that claim 25 was not included in the listing of the claims. On December 8, 2008 Mr. Tillander left a message for Legal Instruments Examiner Ruby Johnson pointing out that claim 25 was never included in the application due to a numbering error and asking that the notice of non-compliant amendment be withdrawn. On December 9, 2008 Mr. Tillander called LIE Johnson. LIE Johnson suggested that the claims be renumbered. Mr. Tillander pointed out that there was no mechanism to amend claim numbers and that doing so would complicate responding to the outstanding office action, forcing one to refer to the numbering as referenced in the office action and also the new numbering. Mr. Tillander also pointed out that, presumably for this reason, the rules indicate that the original numbering of the claims must be preserved throughout the prosecution (i.e., 37 CFR § 1.126). LIE Johnson suggested Mr. Tillander speak with her supervisor Ms. Marilyn Watts and provided the phone number (571) 272 4398 for contacting Ms. Watts. Each time Mr. Tillander called that number he was greeted by a voice mail system that indicated that the person associated with the related extension did not subscribe to the voice mail service. Accordingly, Mr. Tillander contacted the Examiner, Mr. Curtis Alia.

The Examiner suggested that the best course of action was to revise the listing of the claims to indicate that **claim 25** was cancelled. Since, in a sense, claim 25 was canceled before the application was filed, this appears to be the cleanest solution to the

catch 22 established by 37 CFR § 1.126 and the apparent policy of the Legal Instrument Examining department, the listing of the claims has been so revised. No other issues or claims were discussed.

### **The Claims Are Not Obvious**

**Claims 1, 17 and 24** were rejected under 35 USC §103(a) as being unpatentable over Toskala '037 and Toskala '624.

However, **claim 17** recites: --a maximum bitrate limit--. The Office Action relies on paragraph 26 of Toskala '624 for disclosure involving a maximum bitrate limit. However, the system and methods of the present application are directed toward attempting to provide only the level of service that has been subscribed for, and it is respectfully submitted that Toskala '624 (and Toskala '037) is not concerned with this issue. Accordingly, Toskala '624 does not disclose or suggest means for offering to provide communication services in association with a maximum bitrate value selected from a subset of a set of supported maximum bitrate values, the subset including only those elements of the set of maximum bitrate values that are equal to or less than a maximum bitrate limit. Accordingly, cited paragraph 26 of Toskala '624 discusses a UE threshold, a range of possible data rates and a Node B threshold and does not discuss a maximum bitrate limit.

The Office Action draws analogies between the requested maximum bitrate value of **claim 17** and the UE threshold of Toskala '624 and draws an analogy between a "maximum bitrate of the network" (which isn't actually recited in **claim 17**) and the Node B threshold of Toskala '624. It is noted that the Office Action does not identify an analog for the maximum bitrate limit recited in **claim 17** in Toskala '624 or Toskala '037.

Accordingly, **claim 17** is not anticipated and is not obvious in light of Toskala '624 and Toskala '037.

Additionally, **claim 17** has been amended and now recites *inter alia*: "means for determining if a maximum bitrate limit of the subscriber is equal to or greater than a value of a lowest valued member of a set of available maximum bitrate values." Additionally, the recitation of the means for offering has been amended to recite "means for offering to provide communication services in association with a maximum bitrate

value selected from a subset of the set of available maximum bitrate values, if the maximum bitrate limit of the subscriber is equal to or greater than the value of the lowest valued member of the set of available maximum bitrate values, the subset including only those elements of the set of maximum bitrate values that are equal to or less than the maximum bitrate limit of the subscriber, the selected value being equal to the value of the subset element that is greater than or equal to, the lower of the requested maximum bitrate value and the maximum bitrate limit, or has the highest value of the subset."

It is respectfully submitted that paragraph 28 of Toskala '624 appears to indicate that a rate selection of Toskala is made on the basis of received interference or other appropriate traffic metrics. Accordingly, it is respectfully submitted that Toskala **does not** disclose or suggest considering a maximum bitrate limit of a subscriber. Accordingly, for at least these reasons Toskala does not disclose or suggest the means for the determinations, comparisons and selections recited in **claim 17**.

For at least the foregoing additional reasons, **claim 17**, as well as **claims 18-24** which depend therefrom, is not anticipated and is not obvious in light of Toskala '624 and Toskala '037.

**Claims 18-20** were rejected under 35 USC §103(a) as being unpatentable over Toskala '037, Toskala '624 and Iguchi.

However, **claims 18-20** depend from **claim 17** and are not anticipated and are not obvious for at least that reason.

Additionally, with regard to **claim 18**, the Office Action cites paragraph 84 of Iguchi against the first element and paragraphs 140-142 for the second and third elements of **claim 18**.

However, it is respectfully submitted that even if the cited paragraphs disclose the subject matter for which they are relied (which is disputed), it is respectfully submitted that the cited paragraphs are related to two different methods for determining a requested rate. In the method of paragraph 84, either an original request X is used or, if the requested rate X is greater than a maximum allowable rate Y, then the requested rate X is reduced to the maximum allowable rate Y and the resource allocation request is issued to the BTS using the requested rate Y.

On the other hand, according to the method for determining a rate request (see paragraph 132) associated with paragraphs 140-142, the BCS 4 consults the recommended rate database and compares the recommended rate allocated to the subscriber with the requested rate. If the requested rate is greater than the recommended rate, then the BCS changes the requested rate to the recommended rate and sends a resource allocation request containing the requested rate (= recommended rate) to the BTS.

It is respectfully submitted that Iguchi does not disclose a temporary working value that is first set according to the process of paragraph 84 and then, as implied by the citations of the Office Action, further processed according to the methods of paragraphs 140-142. Furthermore, such a further processing would not arrive at the subject matter of **claim 18**.

Moreover, it is respectfully submitted that it would not have been obvious to one of ordinary skill in the art to combine the cited subject matter from Iguchi with the subject matter from Toskala '037 and Toskala '624. Indeed, it is respectfully submitted that it was not even obvious to Iguchi to combine the subject matter from paragraph 84 of Iguchi with the subject matter of paragraphs 140-142 of Iguchi.

For at least the foregoing additional reasons, **claim 18** is not anticipated and is not obvious in light of Toskala '037 and '624 and Iguchi.

**Claim 19** was rejected based on citations similar to those made with regard to **claim 18**. Accordingly, arguments similar to those submitted in support of **claim 18** are submitted in support of **claim 19**.

Furthermore, **claim 19** recites *inter alia*: "offering to provide communication services in association with a highest network element supported value if the temporary working value is above all network element supported values." In this regard, the Office Action cites paragraph 84. However, paragraph 84 describes a requested rate that is the lower of an originally requested rate X or a maximum allowable bitrate limit Y. It is respectfully submitted that paragraph 84 does not mention a highest network element supported value or offering to provide communications services in association with the highest network element supported value if the temporary working value is above all network element supported values, as is recited in **claim 19**.

For at least the foregoing additional reasons, **claim 19** is not anticipated and is not obvious in light of Toskala '037, '624 and Iguchi.

**Claim 20** was rejected based on citations similar to those made with regard to **claim 18**. Accordingly, arguments similar to those submitted in support of **claim 18** are submitted in support of **claim 20**. Furthermore, it is noted that **claim 20** recites *inter alia*: "means for offering to provide communication services in association with a lowest supported value if the temporary working value is below all network element supported values." It is respectfully submitted that the Office Action overlooks and does not address this element of claim 20. Furthermore, it is respectfully submitted that Iguchi does not disclose or suggest a means for offering to provide communication services in association with the lowest supported value if the temporary working value is below all network element supported values.

For at least the foregoing additional reasons, **claim 20** is not anticipated and is not obvious in light of Toskala '037, '624 and Iguchi.

**Claim 23** was rejected under 35 USC §103(a) as being unpatentable over Toskala '037, Toskala '624 and Yuen.

However, even if Yuen discloses a network element can be a GGSN, that **does not disclose or suggest a GGSN including the means for offering to provide communication services in association with a maximum bitrate value selected as described in claim 17.** Furthermore, Yuen does not disclose or suggest a GGSN including the means for determining if a maximum bitrate limit of a subscriber is equal to or greater than a value of a lowest valued member of a set of available maximum bitrate values as is now recited in **claim 17**. Accordingly, and since **claim 23** depends from **claim 17**, **claim 23** is not anticipated and is not obvious in light of Toskala '037, Toskala '624 and Yuen.

#### **Telephone Interview**

In the interests of advancing this application to issue the Examiner is invited to telephone the undersigned to discuss the foregoing or any suggestions that the Examiner may have to place the case in condition for allowance.

### CONCLUSION

**Claims 1-16** and **26-29** are allowed. **Claims 21** has been recognized as including allowable subject matter. **Claim 17** has been amended.

For at least the foregoing reasons, the application is in condition for allowance. Accordingly, an early indication thereof is respectfully requested.

Respectfully submitted,

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